IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 988 of 2004

WITH

CIVIL APPLICATION NO. 1369 of 2004

Shabir I. Bagaban & ors. .. Appellants

versus

Santosh D. Paranjape & ors. .. Respondents

...

Mr.S.S. Patwardhan for the appellants.

Mr.A.A. Kumbhakoni with A.M. Kulkarni for the respondent no.1.

CORAM : B.H. MARLAPALLE,J

DATED : 14th October 2005

P.C.:

1. This appeal has been admitted on 22nd March 2005 and Civil Application no. 1369 of 2004 has been filed for temporary injunction. Pending the appeal, rule was granted in the said Civil Application on

22nd March 2005 with an order of status quo as a result thereof the construction undertaken by the respondent no.1 has come to a stand still, contends the learned counsel for the said respondent. The appeal arises from the order dated 18th November 2004 passed by the Learned Civil Judge, Sr. Division at Karad rejecting the application for temporary injunction filed at Exhibit-5 in Special Civil Suit no.32 of 2004.

2. The learned Judge of the trial Court on perusal of the documents and by taking into consideration the arguments advanced by both the parties noted that an agreement was signed between the plaintiff and defendant no.1 for development of the suit property on 27th June 2003 and permission was obtained from the Karad Municipal Council for construction of the building. The defendants also obtained approval/clearance of the Ekveera Devi devasthan from the Government of Maharashtra on 18th June 2004, sale deed was executed on 27th April 2004. Notice was issued for cancellation of Power of attorney thereafter i.e. 8th June 2004. As per the trial Court, the defendant no.1 commenced the construction on the suit site and the construction

was in progress. The plaintiffs' only allegation was that the defendants acted in breach of the contract in as much as the defendant no.1 did not complete construction work within the stipulated time. On the basis of these prima facie findings, it would not be in the interest of both the parties to stall the construction which is already commenced and more so because the plaintiffs themselves are expected to put in possession of some shops to be constructed in the same building. The plaintiffs may be justified in their apprehension that the defendant no.1 developer may hand over the constructed shops to other parties without maintaining his commitment in the development agreement and thus, the plaintiffs may be deprived of the shops to be handed over to them.

3. The appeal is therefore disposed and it is directed that the Special Civil Suit No.32 of 2004 be tried and decided as expeditiously as possible and preferably by 31st May 2005. In the mean while, if the defendant nos.1 and 2 desire to create third party interest, they shall notify the pendency of the suit to such third parties with a clear understanding that the interest so created shall be subject to the outcome in the suit and if the suit is decided

against the defendants, they shall not create any equity.

4. Writ to go to the trial Court forthwith. It is made clear that the defendant shall not alienate any part of the land as such.

5. Civil Application no.1369 of 2004 does not survive and the same is hereby rejected. Rule stands discharged.

B.H. MARLAPALLE, J